



**Policies & Procedures  
Related to Sexual Misconduct & Interpersonal Violence**

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## CLARKE UNIVERSITY

### **Interim Sexual Misconduct and Interpersonal Violence Policy**

**Procedures for Students, Employees, and University Volunteers related to institutional action in Cases of Sexual Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, Retaliation and Other Forms of Interpersonal Violence or Sex Discrimination.**

#### **What is Title IX?**

Title IX is part of the 1972 re-authorization of the Higher Education Act and that stipulates that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Title IX requires all schools receiving federal financial assistance to take reasonable steps to create a safe, nondiscriminatory learning environment.

#### **A. Policy Statement**

Clarke University prohibits all forms of sexual misconduct, including, but not limited to sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination. Such conduct violates Clarke University’s values and can cause disruption to the living, learning and work environment of students, employees, University volunteers, and other community members.

#### **B. Policy Jurisdiction**

The *Clarke University Sexual Misconduct and Interpersonal Violence Policy* covers all students (prospective, continuing and transfer), employees, and University volunteers. As such, the University can investigate any reported violations of this policy that occur in the United States during a University-sponsored program, University-sanctioned activity, or otherwise directly affect the University’s working or learning environment, regardless of whether the reported conduct occurred on campus, off campus, or through virtual methods.

For every report, the Title IX Coordinator will review the circumstances of the reported conduct to determine whether the University has jurisdiction over the parties involved and take steps within its control to eliminate, prevent, and address the reported conduct. If the Respondent(s) is not a member of the University community or is no longer affiliated with the University at the time of the report or at the time that an *Investigation of Institutional Formal complaints* is initiated (including when the Respondent(s) has graduated or left the University), the University typically is unable to investigate, sanction, or take disciplinary action.

Individuals affected by sexual misconduct and/or interpersonal violence may contact the Title IX Coordinator as detailed in “Section F. Disclosure and/or Reporting Options.”

#### **C. Policy and Procedural Definitions**

For the purposes of determining whether a course of conduct constitutes a violation under this policy and its corresponding procedures, the relevant definitions are listed below.

- “**Employees**” are categorized as staff or faculty of Clarke University.
- “**Faculty**” of the University consists of those individuals with either faculty rank or status.

- **“Complainant(s)”** is an individual(s) who reportedly experienced sexual misconduct and/or interpersonal violence, regardless of whether such individual reports such sexual misconduct and/or interpersonal violence to the University or participates in the University’s conduct process for responding to reports of sexual misconduct and/or interpersonal violence described herein.
- **“Respondent(s)”** is the individual(s) or entity(s) alleged to have committed acts constituting sexual misconduct and/or interpersonal violence, regardless of whether such individual has entered into the University’s conduct process for responding to complaints of sexual misconduct and/or interpersonal violence described herein.
- **“Staff”** are employees of Clarke University (full-time, part time, or casual) where the majority of their work responsibilities are considered non-teaching activities of various types in support of the educational and service programs of the University.
- **“Student”** is any person who is currently enrolled at Clarke University.
- **“Third Party Reporter(s)”** is any individual(s) who reports a violation of this Policy to the University and who is not also the Complainant(s).
- **“University Volunteer”** is any uncompensated individual who is authorized by a University department or division to perform service for or on behalf of the University, or to gain personal or professional experience.
- **“Formal Complaint”** is a document filed by a complainant or signed by the Title IX Coordinator against a respondent and requesting that the recipient investigate the allegation of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

### **Definitions of Prohibited Conduct**

- **“Dating Violence”** means violence committed by a person:
  - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.
- **“Domestic Violence”** means a felony or misdemeanor crime of violence committed by current or former spouse or intimate partner of the victim.
  - A person with whom the victim shares a child in common;
  - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or
  - Any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Note: Clarke University also recognizes emotional, verbal and financial abuse as prohibited conduct and will investigate and adjudicate these types of incidents.

- **“Sexual Harassment”** means conduct on the basis of sex that satisfies one or more of the following:
  - (1) **Quid Pro Quo:** An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct. or
  - (2) **Hostile Environment Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity;
- **“Retaliation”** No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a formal complaint.
- **“Sexual Assault”** means any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
  - **Rape:** the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
  - **Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in Iowa.
  - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent as prohibited by law in Iowa.
- **“Stalking”** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for his or her safety or the safety of others; or
  - Suffer substantial emotional distress.
  - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

## D. Clarke University Consent Standard

1. **Consent** is an agreement expressed through affirmative, voluntary words or actions, and mutually understandable to all parties involved, to engage in a specific sexual act at a specific time:
  - Consent must be ongoing and can be withdrawn at any time by involved parties.
  - Consent requires a mutual, clear and certain yes through body language, words, or actions.
  - Consent cannot be assumed based on the following:
    - Silence
    - Implied confirmation of interest
    - Initiation of sexual contact
    - The absence of a clear/certain yes
    - The absence of a clear/certain “no” through body language, words, and/or actions
    - The existence of a prior or current relationship
    - Prior sexual activity
- a. **Consent cannot be coerced or compelled, including but not limited to the use of force, threat, deception or intimidation.**
  - i. **Coercion:** presenting a mentally and/or emotionally manipulative proposal for the purpose of persuading another person and/or party to act against their own interest and/or best judgement.
  - ii. **Force:** is the use or threat of physical violence, intimidation, or coercion to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity. Such action would cause a person to fear for their physical or psychological well-being.
  - iii. **Deception:** knowingly presenting false or misleading information, identity, circumstance, and/or withholding key information.
  - iv. **Intimidation:** presenting oneself and/or environment in a way that reasonably frightens, threatens, and/or pressures another person and/or party to comply.

Consent cannot be given by someone who is not of legal age to provide it. Consent cannot be given by someone who is incapacitated, as defined below.

2. **Incapacitation** is when a person’s perception and/or judgement is substantially impaired because of a mental or physical condition [including, but not limited to intoxication] causing the person to lack the ability to effectively make or act on conscious decisions.

## E. Disclosure and/or Reporting Options

Clarke University recognizes a distinction between disclosing and formally reporting incidents of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination. Disclosing an incident may not result in a formal complaint, depending on to whom the information is communicated, the circumstances under which the incident occurred, and in many situations, the wishes of the Complainant(s)\*.

### A. Mandatory Reporters

All full- and part-time Clarke University employees, including administration, faculty, staff, University volunteers and student paraprofessionals, such as Resident Assistants and Campus Ministry student interns are mandated to report any incidents of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation or other forms of interpersonal violence or sex discrimination directly to the Title IX Coordinator or Title IX Deputy, unless they are one of the

*confidential resources* outlined below.

**B. Confidential Resources**

\*If you are unsure if you would like to make a formal complaint regarding an incident of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or retaliation, Clarke University's Counseling Services (students only), Health Services, Campus Ministry staff, are confidential resources available to you for disclosure. Confidential resources will not report the disclosure of these incidents to the Title IX Coordinator without a victim/survivor's written permission, and to the extent, they are permitted to promise confidentiality under the law.

**C. On-Campus Confidential Resources – Students**

- a. **Health Services** | [healthservices@clarke.edu](mailto:healthservices@clarke.edu), 563-588-6374  
**Tammy Moore, Director**  
And health services staff
- b. **Counseling Services** | [counseling@clarke.edu](mailto:counseling@clarke.edu), 563-588-8140  
**Lorie Murphy, Counselor**  
And counseling services staff
- c. **Campus Ministry** | [campusministry@clarke.edu](mailto:campusministry@clarke.edu) (563) 588-6364  
Hunter Darrouzet, Director  
Jenna Dalisay, Assistant Director  
Fr. Dustin Vu, Chaplain

**D. On-Campus Confidential Resources – Employees**

- a. **Health Services** | (563) 588-6374  
**Tammy Moore, Director and staff**
- b. **Campus Ministry** | (563) 588-6364  
Hunter Darrouzet, Director  
Jenna Dalisay, Assistant Director  
Fr. Dustin Vu, Chaplain

**E. Off-Campus Confidential Resources- Students and Employees**

- a. **Riverview Center Sexual Assault Services.**  
24-hour Sexual Assault Hotline - 888-557-0310  
Free legal and medical advocacy and therapy
- b. **Dubuque County Shelter Services.**  
24-Hour hotline – 1-800-332-5899  
Available Victim Services:
  - Emergency Shelter
  - Legal and Medical Advocacy Services
  - Crisis Counseling & Safety Planning
  - Clothing
  - Information and referral

c. **Waypoint**

24 Hr. Confidential Hotline- 1-800-208-0388  
Resources for those experiencing domestic violence

F. **On-Campus Formal Complaint – Students, Employees and University Volunteers**

a. **Title IX Coordinator**

Kate Zanger, Vice President for Student Life  
*Student Life Office / Mary Josita Hall, room 19) / (563) 588-6517*  
kate.zanger@clarke.edu

b. **Title IX Deputy Coordinator**

Mary Gitau, Assistant Professor of Social Work  
*Catherine Byrne Hall, room 323 / (563) 588-6578*  
mary.gitau@clarke.edu

F. **Confidentiality and Support**

Clarke University will maintain the confidentiality of the Complainant(s)—regardless of whether confidentiality is requested—to the extent it is legally permitted and has the ability to appropriately provide accommodations, supportive/interim measures, and/or protective measures. As such, there may be situations where disclosing some personally identifiable information about a Complainant(s) may be necessary. For allegations of misconduct related to sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination, the Title IX Coordinator will determine what information about the Complainant(s) should be disclosed and to whom this information will be disclosed. Unless extenuating circumstances exist, the Complainant(s) will be informed before sharing personally identifiable information that the University believes is necessary to provide a safe and non-discriminatory environment, to provide an accommodation(s), and/or to provide any interim or protective measures.

If the Complainant(s) requests the University not reveal the Complainant(s)'s name to the Respondent(s) and/or asks the University to not investigate a formal complaint, this may limit the University's ability to respond fully to the incident, including pursuing disciplinary action, and being able to sanction the prohibited conduct against the Respondent(s). Specific confidentiality requests should be made directly to the Title IX Coordinator.

While Clarke University will strive to honor a Complainant(s)'s requests, there are circumstances when personally identifiable information about a Complainant(s) may be shared and/or when an investigation may occur despite a Complainant(s) requests otherwise. The University has a legal duty to act if it determines it is appropriate and necessary in certain cases of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination where an *Imminent Threat* to the campus community and/or pattern of behavior may be present.

**Imminent Threat** is classified as an incident of sexual misconduct and/or interpersonal violence that includes the following:

- 1) a weapon,
- 2) physical force or violence,

- 3) when the victim/survivor is a minor,
- 4) pattern by same perpetrator, and/or
- 5) a significant threat to the University.

Additionally, the University has a duty to complete certain publicly available recordkeeping, including reporting and disclosing information about certain crimes pursuant to a federal law known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”). Reported incidents of these crimes will be included in the University’s annual crime statistics per its annual security report and daily crime logs, as required. The University is also obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant campus geography that represents a serious or continuing threat to students, employees, and university volunteers, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the Complainant(s). The University will not report and/or disclose personally identifiable information about a Complainant(s) in its recordkeeping required by the Clery Act.

The University will make every effort to respect a Complainant(s)’s autonomy in determining how to proceed when they disclose and/or formally report an incident of sexual misconduct and/or interpersonal violence. Support and resources are always available to Complainant(s)—regardless of the chosen course of action. Receiving a formal complaint of an incident permits the University to keep records of reported incidents and determine the appropriate response and the potential need to alert the University community to potential danger.

## **G. Amnesty Policy**

The University recognizes that students who experience or witness a sexual assault, dating violence, domestic violence, stalking, and/or a medical emergency while under the influence of alcohol or illegal substances may be hesitant to report these occurrences due to concerns for the potential consequences of violating the student code of conduct.

The Amnesty Policy is focused on empowering students to support the health and well-being of themselves and others. Any student coming forward to report incidents involving sexual assault, dating violence, domestic violence, stalking, and/or a medical emergency will be granted amnesty by the Student Conduct and will not be subject to violations of the University’s alcohol and/or substance abuse policies that occurred at or near the time of the alleged incident(s).

Report immediate health and safety emergencies to Clarke University’s Campus Security Staff 24/7 at 563-588-6393. Report non-emergencies to the University’s Title IX Coordinator at 563-588-6517 or [kate.zanger@clarke.edu](mailto:kate.zanger@clarke.edu).

The Amnesty Policy provides amnesty for violations of the student code of conduct as it relates to alcohol and/or substance abuse policies only. Students will be required to meet with a representative from the Student Life Department to provide further information about the incident(s). Students may be required to participate in online education, reflection assignments, and/or assessment and treatment referrals. Students who repeatedly use the amnesty policy may be required to participate in additional supportive measures. Failure to complete assignments required by the University will result in ineligibility for amnesty. Additionally, this policy does not grant amnesty from criminal, civil, or legal consequences for violations of federal, state, or local laws.

## **H. Written Statement of Rights, Reporting Options and Resources**

Any student, employee or University volunteer that discloses an incident and/or makes a formal complaint to the Title IX Coordinator of sexual harassment, sexual assault, domestic violence, dating



violence, stalking, retaliation and/or other forms of interpersonal violence or sex discrimination will receive a written notification of their rights, reporting options, and resources. Please note that the receiving of this information is not dependent on the filing of a formal complaint.

## **I. First Contact with the Title IX Coordinator**

Upon disclosure of an incident of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination from a student, employee, or University volunteer to the Title IX Coordinator, the Title IX Coordinator will reach out to the person(s) who may have experienced the sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination. The outreach (from the Title IX Coordinator or a Title IX Deputy) includes ensuring the Complainant(s) receive information regarding:

- medical and confidential counseling and support resources;
- options for pursuing a formal complaint and/or reporting the incident to law enforcement;
- how to request an interim no-contact order;
- how to request other Supportive/Interim Measures from the University;
- how to preserve evidence;
- where to access more information.

The outreach will also include an invitation to meet with or provide additional information to the Title IX Coordinator. The initial meeting may be followed by 1) filing a formal complaint or 2) a request by the Complainant (s) to take no further action.

The University will strive to honor the request of the Complainant(s) as to a course of action. However, the University has a legal duty to act if the University determines it is appropriate and necessary in certain cases of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination where an *Imminent Threat* to the campus community and/or pattern of behavior may be present (see Section F “Confidentiality and Support” for additional information).

The University will make every effort to respect a Complainant(s)’s autonomy in determining how to proceed. Support and resources are always available to a Complainant(s) regardless of the chosen course of action. Receiving a formal complaint of an incident permits the University to keep records of reported incidents and determine the appropriate response and the potential need to alert the University community to potential danger. Reported incidents will also be included in the University’s annual crime statistics as required by law.

## **J. Supportive/Interim Measures**

In the case of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination, the Title IX Coordinator or Title IX Deputy may take immediate action to assist the Complainant(s) in resuming educational activities while deciding the next steps, if any, to pursue against a Respondent(s) or while awaiting the results of a resolution process.

“**Supportive/Interim Measures**” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such

measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties. Furthermore, the supportive/interim measures are based on what is not clearly unreasonable in light of the known circumstances and does not second-guess a school's disciplinary decisions. Finally, a school is required to offer supportive measures, and provide remedies to Complainant(s) whenever Respondent(s) are found responsible.

The University will provide information, in writing, to Complainant(s) or Respondent(s) about options for, available assistance in, and how to request changes to academic, living, transportation and working situations or protective measures. The institution will make accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the Complainant(s) chooses to report the crime to local law enforcement. Additionally, the University is obligated to comply with a student's reasonable request for a living and/or academic situation change following an alleged sex offense. \*Please note that some Supportive/Interim Measures that impact both the Complainant and Respondent may require a finding of "in-violation" (see *italicized* measures listed below).

Supportive/Interim Measures can include but are not limited to, the following:

- Providing an escort,
- Changing the Complainant(s) class schedule or room assignment in the residence halls,
- Arranging academic accommodations,
- *Issuing no contact orders\**,
- Complying with protection orders\*\*,
- *Limiting the Respondent(s)' access to campus,*
- *Limiting the Respondent(s)' access to facilities and activities,*
- *Changing the Respondent(s)' course schedule or room assignment, and/or*
- Implementing other appropriate educational or prevention strategies to address the environment in which the offense took place.
- Change in University-related work schedules or job assignments
- Voluntary Leave of Absence
- Assistance in contacting community resources
- When appropriate, Supportive/Interim Measures can include Respondent(s) being placed on interim suspension or interim administrative leave.

*\*A person may contact the Title IX Coordinator (563-588-6517) to inquire and request a No Contact Order. This is a written order issued by the University that generally requires an alleged Respondent(s) to stay away from a victim/survivor and is supported by University consequences for non-compliance with the order.*

*\*\*A person may also seek a protection order from the local court of the state of Iowa. This is a legal process independent of the University. A protection order is a written order that generally requires an alleged perpetrator to stay away from a victim/survivor and is supported by legal consequences for non-compliance with the order. If a court order is issued, the University will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on-campus compliance with the order.*

*The Title IX Coordinator (563-588-6517) or a Title IX Deputy, an advocate from Riverview Sexual Assault Education, Prevention & Support Services (1-888-557-0310) or Dubuque County Shelter Services. (1-800-332-5899) are all able to assist victims/survivors who want to request a protection order.*

*If a victim/survivor believes there has been a violation of a court-ordered protection order, they should contact the police department in the jurisdiction where the violation has occurred.*

Information will be provided in writing to a Complainant(s) regarding the above support/interim measures, as well as existing counseling, health, mental health, victim advocacy, legal assistance available for victims both on and off campus. Additionally, it is not required for a formal complaint to be filed and/or investigated for supportive/interim measures to be implemented, as deemed necessary by the Title IX Coordinator. The Title IX Coordinator and/or a Title IX Deputy will use the following factors to determine appropriate Supportive/Interim Measures to be implemented:

- specific need expressed by the complainant
- the age of the students involved
- the severity or pervasiveness of the allegations
- any continuing effects on the complainant
- whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation or job location; and
- whether other judicial measures have been taken to protect the Complainant(s) (e.g., civil protection orders)

**For more information about Supportive/Interim Measures, please contact the Title IX Coordinator, Kate Zanger at (563) 588-6517, or [kate.zanger@clarke.edu](mailto:kate.zanger@clarke.edu).**

## **K. Filing a Formal Complaint**

Any current Clarke University student, employee, or University volunteer may file a formal complaint of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination against other current students, employees, or University volunteers connected to the University. These formal complaints may be submitted in person, by mail, electronic mail, or via phone using the University's contact information for the Title IX Coordinator and must include the Complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. All formal complaints should be submitted directly to the Title IX Coordinator, **Kate Zanger at (563) 588-6717, or [kate.zanger@clarke.edu](mailto:kate.zanger@clarke.edu)** and should include the following information:

- Name of the Alleged Respondent(s)
- Date of the Alleged Incident
- Location of the Alleged Incident
- Details regarding the Alleged Prohibited Conduct being reported

It is strongly encouraged to submit a formal complaint as soon as possible after the incident takes place or becomes known in order to optimize opportunities to secure evidence and witnesses. As there is no time limit on reporting violations of this policy, if a reporting or Respondent(s) is no longer affiliated with Clarke University (e.g. a formal complaint is made after a student has withdrawn/graduated, or an employee or University volunteer is no longer employed and left their position), The University is often limited in its recourse to address the concern, as the University no longer has jurisdiction over the reported incident.

## **L. Law Enforcement Notification**

The University also urges the Complainant(s) to report all instances of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex

discrimination or criminal activity to law enforcement agencies. The Complainant(s) may contact local law enforcement directly, whether or not a formal complaint has been filed with the University. If requested, the University can assist the Complainant(s) in notifying law enforcement to learn about these remedies. The Complainant(s) may also decline to notify law enforcement. Please see the Sexual Misconduct and Interpersonal Violence Prevention Policy (Section C “Definitions – Iowa Code”) for more information on the definitions of these crimes according to the Iowa Code.

A person may formally report an incident to either the police or the University or to both.

### **1. How to File a Police Report**

A victim/survivor wanting to make a police report can contact the Dubuque Police (available 24/7) immediately by calling 911 for emergency response or the non-emergency number 563-589-4415. The Dubuque Police Station is located at 770 Iowa Street, Dubuque.

Filing a formal complaint with local law enforcement allows the department the ability to investigate the alleged crime(s), gather evidence, and refer a case for prosecution when warranted. A victim/survivor may choose to have an advocate present from Riverview Center Sexual Assault Education, Prevention & Support Services (1-800-557-0310) when filing the report and speaking to police.

### **2. Effect of Law Enforcement Notification**

The filing of a formal complaint of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination under this policy is independent of any criminal investigation or proceeding. The University typically does not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim remedies to protect the Complainant(s) and the University community. However, the University may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination that may also violate state or federal law.

## **M. Preservation of Evidence**

As time passes, evidence of sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining orders of protection related to the reported incident more difficult. If a Complainant(s) chooses not to make a formal complaint to the University regarding an incident, they nevertheless they are still able to speak with the Clarke University Title IX Coordinator, law enforcement agencies and/or a local Sexual Assault Nurse Examiner (SANE) program regarding evidence preservation in the event the Complainant(s) changes their mind at a later date. Further, completion of a medical forensic evaluation may also allow a Complainant(s) to preserve evidence while deciding whether to later file a police report.

### **1. Preserving Evidence for Sexual Assaults**

Physical evidence is crucial in helping to prosecute assailants in cases of rape or sexual assault and in obtaining a protection order. Physical evidence must be collected in a timely manner by a certified medical facility. Two of these local medical programs include Mercy One Medical Center’s Emergency Room and Finley Hospital Emergency Room whose contact information is listed below #4. Prior to a medical/legal exam, victim/survivors of rape or assault should not bathe, change clothes,

douche, use the toilet (if possible), smoke or clean the bed/linen/area where they were assaulted if the offense occurred within the past 96 hours so that the evidence may be preserved. If victim/survivors do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted diseases. Rape Kits are free at emergency rooms through a fund for crime victims. Police will be called to retrieve the kit once it is completed, and keep the evidence collected, whether or not a decision to file charges has been made.

**2. Preserving Evidence for Victim/Survivors of Violence**

Preserving evidence may be necessary to prove criminal domestic violence or dating violence, and in obtaining a protection order. Victim/survivors of violence should not bathe or change clothes prior to documentation of physical evidence. Two of the local medical programs that can provide sexual assault examinations for victims/survivors include Mercy One Medical Center and Finley Hospital whose contact information is listed below #4. If victim/survivors do not opt for forensic evidence collection, health care providers can still treat injuries.

**3. Preserving Evidence for Victim/Survivors of Stalking**

Preserving evidence of stalking may be necessary to prove criminal stalking and assisting a victim/survivor in obtaining a protection order. Victim/survivors of stalking should save evidence such as any letters, notes, emails, phone calls, videos, photos, texts, social media postings, computer screenshots, voicemails, or any other form of evidence that would be helpful.

**4. Off-Campus Sexual Assault Nurse Examiner (SANE) Programs – Students and Employees**

**a. Mercy One Medical Center’s Emergency Room**

250 Mercy Drive, Dubuque, IA

**b. Finley Hospital Emergency Room**

350 N. Grandview Avenue, Dubuque, IA.

**N. Institutional Grievance Processes**

**1. Criminal Complaints**

Iowa state and/or federal law will apply, and the matter will follow criminal processes through a police investigation, a referral to the County Prosecutor’s Office, and/or the criminal court system for resolution.

**2. Formal Complaint**

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate. The University’s investigation of formal complaints of policy violations is different and separate from a criminal complaint investigation by any law enforcement agency. An ongoing law enforcement investigation does not relieve the University of its obligation to investigate allegations of conduct prohibited by this policy. In cases involving potential criminal conduct, University personnel must determine, consistent with federal, state, and local law, whether appropriate law enforcement agencies or other authorities should be notified. Conduct may constitute a violation of this policy and result in disciplinary action by the University even if a law enforcement agency and/or court of law determines that the conduct did not constitute a crime.

### **3. Informal Resolution of Formal Complaints**

Clarke University may not require a complainant to waive the right to an investigation and a live hearing with cross-examination. The University may not require the parties to engage in an informal resolution process and may not offer informal resolution, unless a formal complaint is filed and both parties agree, in writing, to an informal resolution. However, at any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution process, such as mediation, a negotiated resolution, or restorative justice, that does not involve a full investigation and adjudication, provided that the University:

- a.** Issues a written notice disclosing:
  - i.** the allegations
  - ii.** the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegation);
  - iii.** a statement that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
  - iv.** an explanation that any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b.** Obtains the parties' voluntary, written consent to the informal resolution process;
- c.** Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Informal resolutions shall be resolved within 30 business days of assignment, unless there is good cause shown to continue the process. Good cause shall include: showing that reasonable progress is being made and that continued informal resolution efforts will likely result in resolution or that there was a good reason for failure to resolve the complaint within 30 days (e.g., the unavailability of the parties, school closings, etc.)

### **4. Notice of Allegations**

The Title IX Coordinator will provide written notice to the Complainant(s) and Respondent(s) regarding:

- 1) Identify the Complainant and Respondent
- 2) Notice of the grievance process
- 3) the allegations of sexual harassment, including sufficient details known at the time (i.e. time and location) and that the respondent will have sufficient time to prepare a response before an initial interview;
- 4) the voluntary nature of the informal resolution process and the availability of a formal investigation at all times; and
- 5) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- 6) Both parties have the right to an advisor of their choice to accompany them throughout the process,
- 7) Inform parties that knowingly making false statements or knowingly submitting false information is prohibited
- 8) Explanation of the right of both parties to present witnesses, other evidence and to review all evidence collected.
- 9) Inform both parties that the Title IX Coordinator reserves the right to amend allegations and change offenses within the Notice as more information becomes available throughout the investigation.
- 10) Identify the relevant policies
- 11) Identify the investigators and their purpose
- 12) Inform parties of that the burden of proof is preponderance of the evidence and that

- gathering evidence rests with the institution
- 13) Address confidentiality within the process
  - 14) Discuss the availability and continued availability of support measures
  - 15) Explain the prohibition against retaliation against any person involved in the investigation
  - 16) Instruct the parties not to destroy any evidence (including electronic communications and photographs) in any format.
  - 17) Provide a reasonable timeframe of up to sixty days for the conclusion of the grievance or informal process.
  - 18) Notification that other school policies might pertain once the investigation is completed and that allegations not falling within this policy may be referred for review/possible action under other University policies/procedures. (e.g. The Student Handbook or Employee Handbook)
  - 19) Investigations are on-going and no decisions have been made to responsibility.
  - 20) Proposed dates for interviews (with sufficient time to prepare)
  - 21) Potential for dismissal
  - 22) Any other rights provided to the parties per policy
  - 23) Point of contact available for immediate support

## **5. Investigation of Formal complaints**

In instances where informal methods of resolution are inappropriate or declined, a formal investigation will be conducted. While all investigations will vary due to the individual circumstances surrounding the particular report, formal investigations under this policy will typically involve the following:

### **a. Initial Review**

Preliminary review by the Title IX Coordinator of any formal complaint filed to determine whether, on its face, an alleged violation of the policy has occurred, and an investigation is needed.

### **b. Investigation of Allegations**

For the purposes of investigation, the Title IX Coordinator will assign Title IX Team members(s) to conduct each stage of the process.

#### **i. Initial Title IX Team Assignment**

Prior to the start of a formal investigation, the Title IX Coordinator will send a written "Initial Title IX Team Assignment" to the Complainant(s) and Respondent(s), which will include the names of the Title IX Team member(s) assigned to investigate and hear the particular formal complaint.

#### **ii. Conflict of Interest**

If any Complainant(s) and/or a Respondent(s) believes any Title IX Team member assigned to the particular formal complaint has a conflict of interest, the party must contact the Title IX Coordinator in writing within 24 hours of receiving the Initial Title IX Team Assignment with an explanation of the alleged conflict of interest (a "Conflict of Interest Actual Knowledge Notice"). The Title IX Coordinator decides whether to replace any member of the Title IX Team assigned to the case.

In the event that the Title IX Coordinator receives a Conflict of Interest Actual Knowledge, the Title IX Coordinator will make any substitutions the Title IX

Coordinator deems appropriate. Similarly, if an assigned Title IX Team Member believes the particular formal complaint poses a conflict of interest for the individual, the Title IX Team member will contact the Title IX Coordinator immediately and the Title IX Coordinator will make any substitutions the Title IX Coordinator deems appropriate. After the Conflict of Interest Actual Knowledge Notice period has passed, the Title IX Coordinator will send a written “Final Title IX Team Assignment” to the Complainant(s) and Respondent(s).

**iii. Title IX Team Member Notification**

The Title IX Team member(s) will send written notification to the Complainant(s) and the Respondent(s) that the formal investigation has started, along with the relevant conduct provision(s) at issue and the potential sanctions and disciplinary actions if a violation of the policy is found.

**iv. Investigative Interviews**

The Title IX Team member(s) will conduct interviews of the Complainant(s), the Respondent(s), and any witnesses identified by those parties. The Respondent(s) shall be provided a copy of any written report or otherwise informed of the substance of any Complainant (s)’s allegations. Similarly, the Complainant(s) shall be provided with a copy of any written response provided by a Respondent(s) or otherwise informed of the substance of any Respondent(s)’s response to the allegations. The investigators may independently identify and interview witnesses and obtain evidence other than offered by the parties. Investigators may decline to interview witnesses unlikely to yield relevant information. The investigators will decline to interview character witnesses if they have no relevant information about the incident. All interviews will be audio recorded (if applicable). Interviewees may request their recorded interview. Neither party shall be restricted from discussing allegations under investigation or from gathering and presenting evidence.

Investigator may request to interview the Complainant, Respondent or any witness more than once during the investigatory process. The investigator’s request to interview one party more times than the other bears no correlation with the potential outcome of the matter, nor is it indicative of investigator bias or unfairness.

**v. Consideration of Evidence by Title IX Team Member(s):**

The Title IX Team member(s) will gather relevant documents or evidence (e.g., law enforcement investigatory records, student and/or personnel files, etc.). Both the Complainant(s) and Respondent(s) will be asked to provide a list of possible witnesses as well as any written or physical evidence (e.g., text messages, social media postings, emails, photos, medical records, etc.) that they wish to be included as part of the investigation. Questions and evidence about Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove:

- That someone other than the Respondent committed the conduct alleged



- by the Complainant; or
- If the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent are offered to prove consent.

**vi. Investigative file**

Once the investigators finishes gathering the available evidence, the investigators will compile all the information directly related to the allegations raised in the formal complaint, including the evidence the school does not intend to rely on in reaching a determination. The investigators will send the parties and their advisors the “investigative file” (redacted), so that each can meaningfully respond to the evidence prior to the conclusion of the investigation. Upon receipt of the “investigative file”, the parties have 10 business days to submit a written response, to be included as an addendum to the “investigative file”, which the investigators will consider prior to the completion of the “investigative report”. Parties have up to 3 business days to respond to the other parties’ response.

- Parties can argue for evidence not included in the report to be included.
- May offer parties and opportunity to provide questions of one of the witnesses or one another.
- Parties may offer additional witnesses/evidence

**vii. Investigative Report**

The Investigators will prepare an Investigative Report complete with a summary of interviews, relevant evidence, written responses, and sends to each party and advisors, at least 10 calendar days prior to hearing, for the parties to review.

**viii.** Upon reviewing the “investigative report”, the Title IX Coordinator will inform determine whether the investigation reveals facts requiring or permitting dismissal of formal complaint. If dismissal is warranted, the Title IX Coordinator will inform parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal. If the Title IX Coordinator determines that the matter will not be dismissed, the Title IX Coordinator will send a Notice of Hearing contemporaneously to the parties.

**ix.** Final ‘investigative report’ and attachments will be submitted to the hearing board prior to the hearing.

**c. Live Hearing**

Once all the initial investigation and interviews have taken place, the live hearing will be scheduled by the Title IX Coordinator. During the live hearing, the decision-makers, called The Hearing Board will facilitate the process of permitting each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including challenging credibility. The Hearing Board consists of the Hearing Facilitator and two panelists. The Hearing Board is permitted to ask questions of both parties and witnesses.

Live hearings may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses, and other participants may

appear at the live hearing virtually. Additionally, schools must create an audio or audiovisual recording, or transcript, of any live hearing.

A delay in the hearing must be for good cause and includes but is not limited to:

- Absence of a party, a party's advisor or witness;
- Concurrent law enforcement activity;
- The need for language assistance or accommodations for disabilities.
- The complexity of a case
- The number of parties or witnesses involved
- University closure or academic breaks
- Any other extenuating circumstances articulated by the Title IX Coordinator or investigator

Absence of a party does not mean a party or witness can indefinitely delay the process by refusing to cooperate. The grievance can proceed to conclusion even in the absence of a party. Written notice of the delay/extension and reason must be sent to the parties.

**i. Cross Examination**

- a. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Relevant questions, submitted in advance are permitted to be asked.
- b. At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- c. Questions need to be submitted at least three business days in advance of the date of the hearing to the Hearing Board Facilitator to determine the relevance of the question.
- d. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- e. If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
- f. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

- g. Cross examination must be conducted in a respectful and non-abusive manner.
- h. If the hearing is virtual, the party speaking must have their video camera turned on when answering questions.

**6. Advisor or Support Person of Choice: Reporting and Respondent(s)**

Complainant(s) and Respondent(s) have a right to be accompanied by one advisor or support person who may be, but is not required to be, an attorney, of the individual's choosing, or if the party needs an advisor, chosen/suggested by the University, during any meeting with a Title IX Team Member and including the live hearing (if applicable). That advisor or support person:

- The role of the advisor within the investigation is limited. Complainants and Respondents are expected to respond to questions from the investigator on their own behalf. The advisor may consult with their advisee quietly or in writing, or during breaks, but may not speak on behalf of the advisee to the investigator. The advisor may not ask questions of their advisee on the record. The advisor may ask the investigator process-related questions. The advisor may not offer facts or submit argument on behalf of their advisee. Any questions posed or factual assertions or argument provided by the advisor during a party's interview will be redacted from the record.
- Is permitted to provide support but cannot advocate for the party or impede the investigation.
- Is permitted to be someone who is a potential witness in the investigation.
- Is permitted to cross examine/ask questions during the live hearing on behalf of the Complainant(s) or Respondent(s), provided they are relevant to the investigation and have been approved by the Hearing Board.
- Questions need to be submitted at least three business days in advance of the date of the hearing to the Hearing Board Facilitator to determine the relevance of the question.
- Any advisor that becomes disruptive in any meeting/hearing, the university reserves the right to remove the advisor from that meeting and/or prohibit them from participating in the remainder of the process. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process. Scheduling of the interviews and meetings will not be unduly delayed due to the lack of availability of the advisor.
- Advisors have the right to inspect and review evidence provided to the party.
- Both parties need to have an advisor present for the live hearing. Clarke University will appoint an advisor for a party who does not have an advisor.
- The advisor during the investigation interviews can be the same or different than the advisor for the live hearing. Any change of advisor needs to be communicated to the Title IX Coordinator at least three business days prior to the live hearing.

**7. Rights of the Complaint(s) and Respondent(s)**

During the investigation and resolution of a formal complaint filed, the Complainant(s) and Respondent(s) shall have equal rights. These rights include the right to:

- have written notice of the allegations upon receipt of a formal complaint.

- to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- to select an advisor of the party's choice who may be, but need not be, an attorney.
- to send written notice of any investigative interviews, meetings, or hearings.
- to send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 business days for the parties to inspect, review, and respond to the evidence.
- to freely discuss and gather evidence related to the allegation (no gag orders)
- to identify and have considered witnesses and other relevant evidence.
- to be apprised of the substance of any statements or evidence provided by the other party.
- to receive, along with their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 business days for the parties to respond.
- to cross examine the Complainant(s) or Respondent(s) and corresponding witnesses during a live hearing.
- to appeal determinations pursuant to "Section Q. Appeal Process"

#### **8. Investigation Timeline**

Efforts will be made to complete a formal investigation within approximately sixty (60) business days of receiving the initial formal complaint. If the University is unable to complete a formal investigation within sixty (60) days of receipt of a formal complaint, the Title IX Coordinator or Title IX Deputy assigned to the investigation, will notify any Complainant(s) and any Respondent(s) in writing of the need for additional time, the reason(s) that additional time is needed, and an approximate date for completion of the formal investigation.

#### **9. Promptness, Fairness and Impartiality**

These investigative procedures provide for prompt, fair, and impartial investigations and resolutions. The Title IX Team members shall discharge their obligations under these procedures fairly and impartially. If the Title IX Team members determine that they cannot apply these procedures fairly and impartially because of the identity of a Complainant(s), Respondent(s), or witness, or due to any other conflict of interest, the Title IX Team member shall designate another appropriate individual to administer these procedures.

#### **10. Dismissal of Allegation**

Clarke University must dismiss allegations of conduct that do not meet the definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate. Furthermore, Clarke University may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. In cases of a request for a withdrawal of a formal complaint, the school must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.

### **O. Investigative Outcomes**

#### **1. Investigative Finding & Determination**

The Hearing Board (who cannot be the same person as the Title IX Coordinator or the investigator)

will issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant. This determination will be provided in writing to both the Complainant (s) and Respondent become final. The following are the potential outcome:

**a. Actual Knowledge Notice of Violation**

In the event the Sexual Misconduct and Interpersonal Violence Hearing Board determines that there is probable cause to believe that a violation of this policy occurred, the Title IX Coordinator will issue a “Actual Knowledge Notice of Violation” in writing to any Respondent(s) and provide a copy of the Actual Knowledge Notice of Violation to any Complainant(s).

**b. Actual Knowledge Notice of No-Violation**

In the event that the Sexual Misconduct and Interpersonal Violence Hearing Board does not find that there is probable cause to believe that a violation of this policy occurred, the board will issue (through the Title IX Coordinator) a “Actual knowledge Notice of No Violation” in writing to any Complainant(s) and provide a copy of the Actual knowledge notice of No Violation to any Respondent(s). The Title IX Coordinator will also notify the parties of their right to appeal the Investigative Findings & Determination, and, if applicable, the sanctions or disciplinary measures recommended.

**2. Standard of Proof**

The standard of proof used for all sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination is a preponderance of evidence. This means there is a greater than 50% chance (based on the evidence provided within the investigation) that the Respondent(s) is responsible for the violation as indicated in the filed report.

If there is a finding of responsibility, the findings and sanctions will be forwarded for follow through on sanctioning or disciplinary action:

- **Staff and University Volunteers:** The Director of Human Resources and the employee’s direct supervisor. Together, in collaboration with the supervising Vice-President and Title IX Coordinator.
- **Faculty:** The Vice-President for Academic Affairs and the faculty members’ Department Chair. Together, in collaboration with the supervising Vice-President and the Title IX Coordinator.
- **Students:** The conduct officer for either resident students or commuter students. In collaboration with the Title IX Coordinator.

**P. Disciplinary Action/Sanctioning**

Depending on the nature of the charges, record of past misconduct, the disciplinary actions and sanctions can include:

- **For Students:**
  - Warning
  - Probation
  - Suspension
  - Expulsion

- Withholding diploma
- Withholding Degree

Other actions include limitations on residential or co-curricular engagement such as removal from limitations on access to a specific residence hall, athletic participation or co-curricular program.

- **For Employees:**

- Warning or written warning
- Behavioral Improvement Plan
- Referral to the Employee Assistance Program
- Required Training or education
- Reassignment of duties
- Suspension without pay
- Suspension with pay
- Termination of employment

- **Clarke University Volunteer Policies**

- i. Volunteers must follow the conduct expectations of employees. University volunteers will behave with the utmost respect and be caring, supportive and friendly in nature at all time. Infractions will not be tolerated. The University has the right to discipline a University volunteer who does not conduct themselves in an appropriate and professional manner.

- ii. **University Volunteer Dismissal:** Dismissal of University volunteers may occur. Prior to dismissal and depending on the seriousness of the infraction, the sponsoring University department or division volunteer supervisor may issue a verbal warning, followed by a written warning. Activities that may warrant immediate dismissal can include but are not limited to the following: poor performance, abuse (sexual or physical), sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and other forms of interpersonal violence or sex discrimination (depending upon the seriousness), alcohol or drug use/abuse, insubordination, falsifying information, illegal or violent acts, and breach of confidentiality. These actions once reported and investigated by the sponsoring University department or division volunteer supervisor will be discussed with the Director of Human Resources and decided upon in terms of whether or not they warrant immediate dismissal. The University volunteer can be dismissed for just cause without warning. All warnings and reports should be placed on file for record and will be treated as confidential in nature. The dismissal process will be dependent on the level of seriousness of the infraction. Volunteers serve at the sole discretion of Clarke University. (s)

- b. **Retaliation**

Charges of retaliation are as separate matter from the Title IX issues and will be addressed promptly through the Human Resources office in collaboration with the employee's direct supervisor.

## **Q. Appeal Process**

The Complainant(s) or Respondent(s) have the right to appeal a determination and recommended sanctioning only on the following grounds:

- 1) There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the investigating Title IX Team Member (s) or the Hearing Board Member, would result in a different decision,
- 2) There was a procedural error significant enough to call the outcome into question, and/or
- 3) The sanction or disciplinary action imposed is disproportionate to the offense.

Appeals are not intended to be full re-hearings of the formal complaint and investigation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for Appeal Officer to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions.

Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.

### **1. Method of Appeal**

Complainant(s) and Respondent(s) may file a written appeal to the Title IX Coordinator within seven (7) business days from the date of the written decision.

The appeal must be in writing and contain the following:

- 1) Name of the Complainant(s)
- 2) Name of the Respondent(s)
- 3) A statement of the outcome of the investigation, including disciplinary action or sanctioning recommendations, if any
- 4) A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it, and requested action, if any

The non-appealing party will have an opportunity to provide a written response to the request for appeal to the Title IX Coordinator. The Title IX Coordinator will confirm the receipt of an appeal and notify the other party of the filing of the appeal by distributing a written Notice of Appeal to both parties. The written response must be submitted within seven (7) business days of receipt of Request for Appeal. If both parties submit an appeal, the same Appeal Officer will decide both appeals individually but contemporaneously.

The parties have 24 hours to object to the appointment of the Appeal Officer, in writing, on the basis of perceived bias or conflict of interest. The basis of the objection must be articulated in writing. The Title IX Coordinator has the sole authority to determine whether to replace the Appeal Officer and that decision is final. When the selection of the Appeal Officer is final, the Title IX Coordinator will provide the appeal (s) to the Appeal Officer.

\*Per University policy, third parties are unable to utilize the institutional process as they are not under the University's jurisdiction, and must be addressed through appropriate administrators, or local enforcement.

### **2. Resolution of the Appeal**

Title IX Coordinator will generally resolve the appeal within fourteen (14) days of receiving it and may take any and all actions that they determine to be in the interest of a fair and just decision. The

decision of the Appeal Officer is final. Appeal Officer shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Hearing Board previous written determination and/or the sanctions and remedial measures imposed. The written statement shall be provided to the Complainant(s), Respondent(s), and the Title IX Coordinator within ten (10) business days of the resolution. Sanctions imposed are then implemented immediately, pending the outcome.

Decisions of the Appeal Officer are final.

If no appeal is filed, or if the appeal is not timely, the original finding will stand, effective on the date the appeal period expires.

If the Appeal Officer determines that the appealing party has articulated valid ground for appeal, the Appeal Officer will notify the parties simultaneously. Following this notification, the non-appealing party has 2 business days to submit a written response to the appeal to the Appeal Officer, which will be provided to the appealing party. The Appeal Officer may invite the investigators and the Hearing Board to submit a response to the appeal, which will be provided to the parties. No further submissions related to the appeal are permitted.

## **R. Annual Training for Conduct and Disciplinary Proceedings**

Annual training on issues related to sexual misconduct and interpersonal violence is provided for all university officials involved in Clarke University's Title IX process and conduct and disciplinary proceedings. Any investigative procedures implemented will be conducted by officials who have received annual training on issues related to sexual misconduct and interpersonal violence and how to conduct an investigation that protects the safety of victims and promotes accountability.

### **Title IX Coordinator, Title IX Deputy, Conduct Officers, Sexual Misconduct and Interpersonal Violence Hearing Board, and Appeal Officers are annually trained in:**

- Title IX, VAWA, Clery legislation and statutes
- Neurobiology of trauma
- Definitions of sexual assault, domestic violence, dating violence, and stalking
- Information about the causes and effects of sexual assault, domestic violence, dating violence and stalking
- The ways victims respond to trauma/tactics of offenders
- Information on the issue of consent in sexual assault cases
- Confidentiality
- Supportive/interim measures
- Conduct and Hearing Procedures
  - Basic Procedure for proceedings
  - Addressing conflicts of interest
  - Evidence gathering and use
  - Questioning witnesses
- Disciplinary action and sanctioning
- Grievance appeals process



Clarke UNIVERSITY

# **Sexual Misconduct and Interpersonal Violence Prevention Policy**

## **A. Policy Statement**

Clarke University prohibits all forms of dating violence, domestic violence, sexual assault, and stalking as defined by the Clery Act, and believes all members of the campus community share the responsibility of preventing sexual misconduct and interpersonal violence. Campus prevention and awareness programming for students and employees include a statement that the university prohibits all forms of dating violence, domestic violence, sexual assault, and stalking as defined by the Clery Act; the definitions for consent, sexual assault, dating violence, domestic violence, and stalking as defined by Clarke University and Iowa law; and information on safe and positive bystander intervention strategies and risk reduction strategies as defined by the Clery Act.

## **B. Ongoing Prevention and Awareness Programs and Campaigns**

Clarke University annually provides for its students and employees comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and either are informed by research or are assessed for value, effectiveness, or outcome. These also consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

Some of these prevention and awareness programs and campaigns include:

- Safe Colleges on line training on understanding Title IX rights and responsibilities required of all undergraduate and graduate students.
- Dramatic Dialogues program for new undergraduate students as part of the CONNECT orientation program followed by By-stander information.
- **Domestic Violence Awareness & Prevention Month:** programs, which focus on primary prevention and educating the campus community on the warning signs of unhealthy relationships.
- Riverview Center, local rape crisis center offers prevention and awareness program for students and employees including programs and information tables.

## C. Definitions – Iowa Code

As part of its Policy, Clarke is required to provide legal definitions and the criminal sentences related to certain Sexual Offenses. Legal definitions may differ from Clarke’s policies. Chapter 709 of the Iowa Code defines sexual offenses. Chapter 709 also lists the sanctions and degrees of sex crimes. Students should be aware that Sexual Abuse is a criminal act, which carries penalties of varying degrees depending on the violation. Chapter 709 is available on-line at:

<http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=709>.

**Sexual Abuse**– Sexual Abuse is defined as a sex act between persons when the act is done by force or against the will of the other. This includes an act that is done while the other person is under the influence of drugs or alcohol. It is also Sexual Abuse when the sex act is done with a person who suffers from a mental defect or with a person who has not attained his or her majority (reached the age of 18).

Sexual Abuse/First Degree– Occurs when the sexual abuse causes another person a serious injury in the course of the abuse. This is a Class “A” felony which is punishable by life in prison.

Sexual Abuse/Second Degree– Occurs under the following circumstances:

- The offender is aided or abetted by another person(s) and the sex act is committed by force or against the will of the victim.
- If the victim is under the age of 12.
- If during the commission of the sexual abuse, the offender displays a weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.

This is a Class “B” felony which is punishable by prison terms of up to 25 years.

Sexual Abuse/Third Degree– Occurs under the following circumstances:

- The act is done by force or against the will of the other party, whether or not the victim is the perpetrator’s spouse
- When the victim is suffering from a mental defect or incapacity
- When the victim is a child of 12 or 13
- When the victim is 14 or 15, if the victim is a member of the same household as the perpetrator, if the victim and perpetrator are relatives, if the perpetrator uses a position of authority to coerce the act, or if the perpetrator is more than four years older than the victim is.
- When the victim is under the influence of a controlled substance
- When the victim is incapacitated or physically helpless. This is a Class “C” felony, which is punishable by up to ten years in prison.

**Note:** For the purposes of adjudicating students and employees for violations of the Clarke University Sexual Misconduct and Interpersonal Violence Policy, the University uses the following definitions of these crimes (as outlined in the Clery Act):

- “Sexual assault” can be found in Section C. Procedural Definitions.
- “Consent” can be found in Section D. Clarke University Consent Standard.
- “Domestic Violence”, “Dating Violence” and “Stalking” can be found in Section E. Domestic Violence, Dating Violence and Stalking.

## D. Bystander Intervention

Bystander interventions mean safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm,

understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

Clarke University encourages bystanders to be active in interrupting (potentially) harmful situations they may witness, including those that promote or are an act of sexual misconduct and/or interpersonal violence. Clarke promotes the idea of shared responsibility and that each member of our community plays a role in preventing violence from occurring. When interrupting a harmful situation, bystanders should stay at a distance and gather others for assistance, when possible. Clarke promotes the 4 Ds of Bystander Intervention in its trainings and programs as safe options for intervention.

Employees and students should take the following steps when implementing intervention strategies:

- 1. Actual knowledge notices the Situation** – Bystanders must first notice harmful actions taking place. Educate yourself about interpersonal violence and the warning signs of abuse. Share this information with your friends and colleagues.

#### **Warning Signs That Could Lead to a Sexual Assault:**

- Withdrawing from other relationships or activities, for example, spending less time with friends, leaving sports teams, or dropping classes
- Saying that their partner doesn't want them to engage in social activities or is limiting their contact with others
- Disclosing that sexual assault has happened before
- Any mention of a partner trying to limit their contraceptive options or refusing to use safer sexual practices, such as refusing to use condoms or not wanting them to use birth control
- Mentioning that their partner is pressuring them to do things that make them uncomfortable
- Signs that a partner controlling their means of communication, such as answering their phone or text messages or intruding into private conversations
- Visible signs of physical abuse, such as bruises or black eyes

*(Taken from Rape, Abuse, & Incest National Network, [www.rainn.org](http://www.rainn.org))*

#### **Warning Signs of Relationship Violence**

- Tells you that you can never do anything right
- Shows extreme jealousy of your friends and time spent away
- Keeps you or discourages you from seeing friends or family members
- Insults, demeans or shames you with put-downs
- Controls every penny spent in the household
- Takes your money or refuses to give you money for necessary expenses
- Looks at you or acts in ways that scare you
- Controls who you see, where you go, or what you do
- Prevents you from making your own decisions
- Tells you that you are a bad parent or threatens to harm or take away your children
- Prevents you from working or attending school
- Destroys your property or threatens to hurt or kill your pets
- Intimidates you with guns, knives or other weapons
- Pressures you to have sex when you don't want to or do things sexually you're not comfortable with

- Pressures you to use drugs or alcohol

*(Taken from The National Domestic Violence Hotline, [www.thehotline.org](http://www.thehotline.org))*

### **Warning Signs of Stalking**

[When a friend is...]

- Always looking over [their] shoulder?
- Confused about how someone always seems to know where [they] are?
  - Unsure when that person will show up again?
  - Nervous about checking [their] e-mail or phone because it might be him/her/them again?
  - Scared of what that person might do next?

*(Taken from SPARC, [www.stalkingawareness.org](http://www.stalkingawareness.org))*

- 2. Interpret the situation as harmful** – Bystanders also need to evaluate the situation and determine whether it is harmful – or at least one in which someone needs assistance.
- 3. Assume Responsibility** – Another decision bystander make is whether they should assume responsibility for the harmful situation and provide help.
- 4. Attempt to Help** - Help the person leave the situation, confront a behavior, diffuse a situation, or call for other support/security. Confront friends who make excuses for other people’s abusive behavior. Implement the **4 Ds of Bystander Intervention**:
  - **Direct** – A bystander may choose to directly engage with a perpetrator, victim, or both. Using this strategy, they would directly address the inappropriate attitudes or behaviors that are occurring and/or would remove the victim from the harmful situation.
  - **Delegate** – A bystander may choose to ask someone else or a group to help intervene in the harmful situation.
  - **Distract** – A bystander may choose to divert the attention of the perpetrator and help remove the victim from the situation or to draw the attention of other bystanders to the situation occurring.
  - **Delay** – If a situation is unsafe or if a bystander is unsure of all the details of the situation, the bystander can check back in with the victim or make a report after the incident occurs.

If someone is in immediate danger, call Campus Security at 563-588-6393 or local police at 911 for assistance.

## **E. Risk Reduction**

Risk reduction strategies are designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

With no intent to victim blame and recognizing that only abusers are responsible for their abuse, the following are some strategies to reduce one’s risk of sexual assault or harassment:

### **1. Avoiding Dangerous Situations**

- **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- **Try to avoid isolated areas.** It is more difficult to get help if no one is around.
- **Walk with purpose.** Even if you don’t know where you are going, act like you do.
- **Trust your instincts.** If a situation or location feels unsafe or uncomfortable, it probably isn’t the best place to be.

- Try not to load yourself down with packages or bags as this can make you appear more vulnerable.
- **Make sure your cell phone is with you** and charged and that you have cab money, and/or an on-demand driver app loaded.
- **Don't allow yourself to be isolated** with someone you don't trust or someone you don't know.
- **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.

## 2. In a Social Situations

- **When you go to a social gathering, go with a group of friends.** Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- **Trust your instincts.** If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately, (local authorities can be reached by calling 911 in most areas of the U.S.).
- **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you have left your drink alone, just get a new one.
- **Don't accept drinks from people you don't know or trust.** If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
- **Watch out for your friends, and vice versa.** If a friend seems out of it, is way too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
- **If you suspect you or a friend has been drugged,** contact law enforcement immediately, (local authorities can be reached by calling 911 in most areas of the U.S.). Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).

## 3. If Someone is Pressuring You

If you need to get out of an uncomfortable or scary situation, here are some things that you can try:

- **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
- **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
- **Have a code word** with your friends or family so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
- **Lie.** If you don't want to hurt the person's feelings, it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
- **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
- **If you and/or the other person have been drinking,** you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

*Taken from Rape, Abuse, & Incest National Network, [www.rainn.org](http://www.rainn.org))*

*Created 8/13/2020*